AYER MOLEK RUBBER COMPANY BERHAD & 9 ORS.

v.

INSAS BERHAD & ANOR.

COURT OF APPEAL, KUALA LUMPUR
DATO' N. H. CHAN JCA
DATO' SITI NORMA YAAKOB JCA
DATO' K. C. VOHRAH JCA
[CIVIL APPEAL NO. W-02-187-1995]
31 JULY 1995

INJUNCTIONS: *Mandatory injunction - Whether could be granted ex-parte - Whether application therefor ought to be made inter-partes - Evidence of emergency or urgency - Whether a necessary prerequisite - Rules of the High Court 1980, O. 29 r. 1(2).*

INJUNCTIONS: *Ex-parte mandatory injunction - High Court refusing application for stay - Compulsive compliance of injunctive order - Whether an abuse of the process of the High Court - Whether a misuse of procedure - Effect - Whether respondents ought to be restrained from enjoying rights under ex-parte order.*

JURISDICTION: *Inherent jurisdiction of superior Courts - Ex-parte mandatory injunction granted against appellants - Terms of order pre-empted appellants from exercising right to apply for discharge of order - Whether manifest injustice - Whether a misuse of Court procedure - Inherent power of Court to prevent injustice - Whether to be exercised - Ex-parte injunctive orders - Whether to be stayed.*

PRACTICE & PROCEDURE: *Proceedings in High Court - Whether to be filed in correct Division of the Court - Writ averred to a cause of action commercial in nature - Respondents filed proceedings in Appellate and Special Powers Division of the High Court - Whether improper - Whether fatal - Whether action to be filed in the Commercial Division.*

COMPANY LAW: *Shares - Transfer of ordinary shares of company - Registration of transfer - Proper instruments - Whether registration of transfer of shares without proper instrument of transfer in prescribed form prohibited - Sections 103(1), 105 Companies Act 1965.*

This was an application by the appellants to stay an *ex-parte* mandatory injunction which the trial Judge had granted against them. The said injunction, issued on 10 April 1995, *inter alia* compelled the share registrar of the first appellant company to register, within two working days, the transfer of 540,000 ordinary shares of that company to the respondents. Part of the order threatened the appellants with imprisonment for contempt in case of disobedience.

The facts showed that on 12 April 1995, i.e two days after the order was issued, the appellants applied to set aside the order. The application came up for hearing on 13 April 1995 but was adjourned by the learned Judge to 27 April 1995. This latter date, however, was way beyond the two-day period allowed for compliance of the *ex-parte* order. The appellants, in the circumstances, applied for a stay of the order but the same was refused by the learned Judge. The result was that on 14 April 1995, in compliance of the *ex-parte* order, the transfer of the shares was registered in the respondents' favour.

The appellants filed a notice of appeal against the *ex-parte* order aforesaid and pending appeal applied for a stay of that order. Before the Court of Appeal the main issues that arose were:

1. Whether the *ex-parte* mandatory order was extracted through an abuse of the process of the Court.

2. Whether the said order, in the circumstances it was granted, had caused manifest injustice to the appellants.

3. Whether on the facts, the Court of Appeal ought to exercise its inherent jurisdiction and allow the application for stay.

Held:

Per N.H. Chan JCA (delivering the judgment of the Court):

[1] This is a case about an injustice which has been perpetrated by a Court of law. The injustice, which is manifest, is to be seen in the form in which the order is framed, the terms of which pre-empted the appellants from exercising their right to apply to discharge the *ex-parte* injunction obtained behind their backs. This is also a case about abuse of the process of the High Court, and therefore it concerns the inherent power which any Court of justice must possess to prevent misuse of its procedure.

[2] By s. 103(1) of the Companies Act 1965, the first appellant company is prohibited from registering a transfer of the shares unless a proper instrument of transfer in the prescribed form had been delivered to the company. There having been no delivery of such instrument to the company as required by law, it was not open to the respondents to have resorted to the High Court to compel the company to register the transfer of the said shares.

[3] As is explicit in O. 29 r. 1(2) of the RHC 1980, although mandatory injunction could be granted on interlocutory application, it ought not to be granted in the absence of evidence of an emergency or urgency. There is no urgency shown in the present case, and as such, it was quite wrong for the learned Judge to have granted relief *ex-parte* behind the backs of the appellants. The respondents ought to have applied *inter-partes* so as to give the appellants a proper opportunity to be heard.

[4] The *ex-parte* order herein, which compelled compliance of it within two working days, and the subsequent conduct of the Judge in adjourning the application to set aside the *ex-parte* order to a date after the period allowed for compliance of the order, coupled with the refusal to grant a stay of that order, had the effect of depriving the appellants from exercising their right to apply to set aside the injunction. This is a misuse of the Court's procedure and is manifestly unjust to the appellants. In the circumstances this Court has a duty to exercise its inherent power to prevent such misuse of procedure.

[5] The shares in question, though now registered in the name of the respondents, should be preserved pending the outcome of the appellants' appeal. An interim order therefore ought to be granted to restrain the respondents from enjoying or exercising any rights attached to the shares described in the *ex-parte* order of 10 April 1995, including the right to dispose of the said shares, directly or otherwise.

[6] The respondents' general indorsed writ in this case averred to a cause of action which is commercial in nature. That being the case the proceedings should have commenced in the Commercial Division of the High Court and not, as happened here, in the Appellate and Special Powers Division. By filing the proceedings in the wrong Division of the Court, and being heard therein, an impression arose that litigants could choose their own Judge for adjudication of their case. This is unhealthy, and as such, to dispel any notion of partiality, it is imperative that the trial Judge transfer the proceedings to the right Division when the matter came up before him. The failure to do this provided this Court with added reason to exercise its inherent power and issue the interim injunction aforesaid.

[Interim injunction issued against respondents pending appeal]

[Bahasa Malaysia Translation of Headnote]

INJUNKSI: *Injunksi mandatori - Samada boleh diberikan ex-parte - Samada permohonan harus dibuat inter-partes - Kewujudan keadaan darurat atau mendesak - Samada satu pra-syarat perlu - Kaedah-Kaedah Mahkamah Tinggi, 1980 A. 29 k. 1(2).*

INJUNKSI: *Injunksi mandatori ex-parte - Mahkamah Tinggi menolak permohonan untuk penggantungan - Pemaksaan pematuhan kepada perintah injunksi - Samada satu penyalahgunaan proses Mahkamah Tinggi - Samada satu penyalahgunaan prosedur - Kesan - Samada responden harus ditegah daripada menikmati hak-hak di bawah perintah ex-parte.*

BIDANGKUASA: *Bidangkuasa sedia ada Mahkamah-Mahkamah atasan - Injunksi mandatori ex-parte diberikan terhadap perayu - Terma-terma perintah menghalang perayu daripada melaksanakan hak-hak untuk memohon pelepasan perintah - Samada ketidakadilan yang manifes - Samada satu penyalahgunaan prosedur Mahkamah - Kuasa sedia ada Mahkamah untuk menghalang ketidakadilan - Samada patut dilaksanakan - Perintah-perintah injunksi ex-parte - Samada patut digantung.*

AMALAN & PROSEDUR: *Prosiding dalam Mahkamah Tinggi - Samada hendaklah difailkan dalam Bahagian Mahkamah yang betul - Writ menegaskan kepada satu kausa tindakan yang bersifat komersial - Responden memfail prosiding dalam Bahagian Rayuan & Kuasa-Kuasa Khas Mahkamah Tinggi - Samada tidak teratur - Samada memudaratkan - Samada tindakan harus difailkan dalam Bahagian Komersial.*

UNDANG-UNDANG SYARIKAT: *Saham - Pindahmilik saham-saham biasa syarikat - Pendaftaran pindahmilik - Suratcara yang betul - Samada pendaftaran pindahmilik saham-saham tanpa suratcara pindahmilik yang betul dalam borang yang ditentukan dilarang - Seksyen-sekyen 103(1), 105 Akta Syarikat 1965.*

Ini adalah permohonan oleh perayu untuk menggantung injunksi mandatori *ex-parte* yang dikeluarkan oleh Hakim perbicaraan terhadap mereka. Injunksi tersebut, yang dikeluarkan pada 10 April 1995 antara lainnya, memaksa pendaftar saham syarikat perayu pertama untuk mendaftarkan dalam tempoh dua hari bekerja, pemindahan 540,000 saham-saham biasa syarikat tersebut kepada responden. Sebahagian daripada perintah tersebut mengugut perayu dengan pemenjaraan kerana penghinaan jika berlaku keingkaran.

Fakta menunjukkan bahawa pada 12 April 1995, iaitu dua hari selepas perintah tersebut dikeluarkan, perayu memohon untuk mengenepikan perintah tersebut. Permohonan berkenaan tiba untuk perbicaraan pada 13 April 1995 tetapi telah ditangguhkan oleh yang arif Hakim kepada 27 April 1995. Tarikh yang terkemudian ini, walau bagaimanapun, jauh melebihi tempoh dua hari yang dibenarkan bagi pematuhan perintah *ex-parte* tersebut. Dalam keadaan yang sedemikian perayu telah memohon untuk mendapatkan penggantung perintah tersebut tetapi ianya ditolak oleh yang arif Hakim. Hasilnya adalah pada 14 April 1995, sebagai mematuhi perintah *ex-parte* tersebut, pemindahan saham-saham itu telah didaftarkan atas nama responden.

Perayu telah memfailkan satu notis rayuan terhadap perintah *ex-parte* di atas, dan sementara menantikan penyelesaian rayuan, telah memohon untuk mendapatkan penggantung perintah itu. Di hadapan Mahkamah Rayuan isu-isu utama yang terbit ialah:

1. Samada perintah mandatori *ex-parte* tersebut telah dikeluarkan melalui satu penyalahgunaan proses Mahkamah.

2. Samada perintah tersebut, dalam keadaan ianya diberikan, telah menyebabkan ketidakadilan manifes kepada perayu.

3. Samada berdasarkan fakta, Mahkamah Rayuan seharusnya melaksanakan bidangkuasa sedia adanya dan membenarkan permohonan untuk penggantungan.

Diputuskan:

Oleh N.H.Chan HMR (menyampaikan penghakiman Mahkamah):

[1] Kes ini adalah berhubung dengan ketidakadilan yang telah dilakukan oleh sebuah Mahkamah undang-undang. Ketidakadilan tersebut, yang mana adalah manifes, boleh dilihat dalam bentuk perintah itu dirangka, yang mana terma-termanya menghalang perayu dari melaksanakan hak-hak mereka untuk memohon melepaskan injunksi *ex-parte* yang diperolehi di belakang mereka. Ini adalah juga kes mengenai penyalahgunaan proses Mahkamah Tinggi, dan dengan itu ianya berkaitan kuasa sedia ada yang mana-mana Mahkamah keadilan harus memilikinya bagi menghalang penyalahgunaan prosedurnya.

[2] Melalui s. 103(1) Akta Syarikat 1965, syarikat perayu pertama dilarang daripada mendaftarkan pemindahan saham-saham kecuali satu suratcara yang betul yang dibuat dalam borang yang ditetapkan dihantarserahkan kepada syarikat tersebut. Oleh kerana tidak terdapat penghantaran suratcara yang sedemikian kepada syarikat tersebut sepertimana yang dikehendaki oleh undang-undang, ianya tidak terbuka kepada responden untuk mendapatkan bantuan Mahkamah Tinggi bagi memaksa syarikat tersebut untuk mendaftarkan pemindahan saham-saham tersebut.

[3] Sepertimana yang jelas dalam A. 29 k. 1(2) Kaedah-Kaedah Mahkamah Tinggi 1980, walaupun injunksi mandatori boleh diberikan atas permohonan interlokutori, ianya tidak seharusnya diberikan dalam ketiadaan keadaan darurat atau mendesak. Dalam kes semasa ini kedesakan tidak ditunjukkan dan oleh yang demikian, ianya adalah agak salah bagi Hakim yang bijaksana untuk memberikan relief *ex-parte* tanpa pengetahuan perayu. Responden sepatutnya memohon secara *inter-partes* agar dapat memberikan peluang yang wajar kepada perayu untuk didengar.

[4] Perintah *ex-parte* di sini, yang memaksa pematuhannya dalam tempoh 2 dari bekerja, dan tindakan Hakim menangguhkan permohonan untuk mengenepikan perintah *ex-parte* tersebut kepada satu tarikh selepas tempoh yang dibenarkan untuk pematuhan perintah tersebut, diiringi dengan keengganan untuk memberikan penggantungan perintah tersebut, mempunyai kesan menafikan hak perayu untuk memohon mengenepikan injunksi tersebut. Ini adalah satu penyalahgunaan prosedur Mahkamah dan adalah secara manifesnya tidak adil kepada perayu. Dalam keadaan yang sedemikian Mahkamah ini mempunyai kewajipan untuk melaksanakan kuasa sedia adanya untuk mencegah penyalahgunaan prosedur yang sedemikian.

[5] Saham-saham yang berkenaan, walaupun kini didaftarkan atas nama responden, seharusnya dipelihara sementara menantikan keputusan rayuan perayu. Satu perintah interim dengan itu haruslah diberikan bagi menghalang responden daripada menikmati atau melaksanakan apa-apa hak yang diperolehi terhadap saham-saham melalui perintah *ex-parte* bertarikh 10 April 1995, termasuk hak untuk melupuskan saham-saham tersebut, secara langsung atau sebaliknya.

[6] Writ responden yang diendorskan secara am dalam kes ini menegaskan kepada kausa tindakan yang bersifat komersial. Dalam keadaan itu prosiding tersebut seharusnya dimulakan dalam Bahagian Perdagangan, Mahkamah Tinggi dan bukan, sepertimana yang berlaku di sini, dalam Bahagian Rayuan dan Kuasa-kuasa Khas. Dengan memfailkan prosiding tersebut dalam Bahagian Mahkamah yang salah dan didengar pula di situ, satu tanggapan telah berbangkit

bahawa litigan-litigan boleh memilih Hakim mereka sendiri untuk penghakiman kes mereka. Keadaan ini adalah tidak sihat, dan oleh yang demikian, bagi menghilangkan apa-apa tanggapan berat sebelah, ianya adalah sangat mustahak bahawa Hakim perbicaraan memindahkan prosiding tersebut kepada Bahagian yang betul apabila perkara tersebut tiba di hadapannya. Kegagalan melakukan perkara ini telah memberikan Mahkamah ini alasan tambahan untuk melaksanakan kuasa-kuasa sedia adanya dan mengeluarkan injunksi interim yang tersebut di atas.

[Injunksi interim dikeluarkan terhadap responden sementara menantikan rayuan]

Cases referred to:
Hunter v. Chief Constable [1982] AC 529 ***(foll)***
Hull & Humber v. TGWU [1972] 1 Llyods' Rep 197 ***(foll)***
London City Agency (JDC) v. Lee [1970] Ch 597 ***(refd)***

Legislation referred to:
Companies Act, 1965, ss. 103(1), 105
Rules of the High Court 1980, O. 29, rr. 1(2) & 1(2B)

Other sources referred to:
Atkin's Court Forms, 2nd edn., Vol. 22 (1991 issue), pp. 60 & 72, paras 5 & 15

For the defendants/appellants - Loh Siew Cheang (Loo Foong Meng with him); M/s. Cheang & Ariff
For the plaintiffs/respondents - V. Sivaparanjothi (Adam bin Bachek with him); M/s. V.K. Lingam & Co.

JUDGMENT

N. H. Chan JCA:

This is a motion by the appellants to stay an *ex parte* mandatory injunction pending appeal to the Court of Appeal. But this case is more than that. This is a case about an injustice which has been perpetrated by a Court of law. This is also a case about abuse of the process of the High Court and, therefore, it concerns the inherent power which any Court of justice must possess to prevent misuse of its procedure and in which the Court has a duty to exercise this salutary power.

Although the *ex parte* mandatory injunction should not have been granted in the circumstances of this case in the first place, that is not the injustice which is revealed in this case. The injustice is manifest: it is to be seen in the form in which the order is framed, the terms of which pre-empt the defendants from exercising their right to apply to discharge an *ex parte* injunction obtained behind the backs of the defendants. Here the plaintiffs through their legal advisers have abused the process of the High Court by instigating the injustice through misuse of the Court's procedure by manipulating it in such a way that it becomes manifestly unfair to the defendants. By doing what they did these unethical lawyers have brought the administration of justice into disrepute among right thinking people.

We do not think we can do better with this censure than to voice and emphasise the opening words of Lord Diplock in his judgment in the House of Lords in *Hunter v. Chief Constable* [1982] AC 529, at 536:

> My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any Court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application, of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal

must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the Court has a duty (I disavow the word discretion) to exercise this salutary power.

On 10 April 1995, the plaintiffs (who are the respondents in the present motion before us) obtained on an *ex parte* interlocutory application before a Judge of the High Court mandatory injunctions against the defendants, the 1st to the 10th of whom are the applicants) before this Court. The order reads as follows:

It Is Hereby Ordered that an injunction be made against the eleventh defendant to forthwith process the share certificates for the 540,000 ordinary shares and register the names of the plaintiffs in the share register of the first defendant and further issue the following new share certificates within two (2) working days of receipt from the plaintiffs:

i) one (1) new share certificate in the name of the first plaintiff for 360,000 ordinary shares.

ii) four (4) new share certificates in the name of the second plaintiff which are:

One (1) new share certificate for 85,000 ordinary shares; one (1) new share certificate for 40,000 ordinary shares; one (1) new share certificate for 45,000 ordinary shares and one (1) new share certificate for 10,000 ordinary shares respectively.

iii) And to forward all the above (5) new share certificates to the third defendant within two (2) working days from the date of receipt of the 540,000 ordinary shares.

It Is Further Ordered that an injunction be made against the third, eight, ninth and or tenth defendants to forthwith within two (2) working days from the date of receipt from the eleventh defendant of the five (5) new share certificates to affix the signatures of both the third and the eight, ninth and/or tenth defendants on the five (5) new share certificates and further the third defendant do forthwith be ordered and directed to forward the five (5) new share certificates to the eleventh defendant for onward transmission to the plaintiffs within two (2) working days from date of receipt of the new share certificates from the eleventh defendant and to do all or any acts necessary to complete the registration of the 540,000 shares into the names of the plaintiffs.

It Is Further Ordered that injunction be made against the second, fourth, fifth, sixth and seventh defendants restraining them whether by themselves, their servants and/or agents and/or otherwise howsoever from interfering/interrupting or causing any hinderance in any manner whatsoever in the registration and issuance of the five (5) new share certificates for the 540,000 ordinary shares of the first defendant into the names of the plaintiffs.

It Is Also Ordered that if the defendants or their officers, servants or agents or representatives disobey this order of this Honourable Court they will be committed to imprisonment for contempt of this Honourable Court.

It Is Lastly Ordered that the costs of and incidental to this application be in the cause of this action.

The *ex parte* order compels the defendants to effect, (a) the registration of the transfer of 540,000 ordinary shares of the 1st defendant company to the plaintiffs in the share register of the company and (b) the issue of new share certificates in the plaintiffs' names, within two working days of their receiving the share certificates. The order was served on the defendants on 11 April 1995.

The plaintiffs' affidavit in support of the *ex parte* application for the injunction before the High Court tries to create an impression that the first defendant was trying to thwart the registration of the transfer of these shares to the plaintiffs but the plaintiffs were unable to say that the company had refused to register the transfer. The affidavit also attempts to

give a vague impression that the other defendants, who are directors of the first defendant company, were obstructive with the same purpose of preventing the registration of the shares. Again it did not say how these directors have obstructed or prevented the registration of these shares. But what the affidavit failed to do was to bring to the notice of the Court the statutory prohibition under s. 103(1) of the Companies Act, 1965 against a company registering a transfer of shares unless a proper instrument of transfer in the prescribed form had been delivered to the company. Section 103(1) reads:

> 103. Instrument of transfer
>
> 1) Notwithstanding anything in its articles a company shall not register a transfer of shares or debentures unless a proper instrument of transfer in the prescribed form has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

There having been no delivery of any instrument of transfer to the company as required by law, how could the plaintiffs have resorted to the High Court to compel the company to register the transfer of the shares? In fact, not only was there no delivery of any instrument of transfer to the company, there was also no evidence of any refusal by the company to register the transfer of the shares. Section 105 of the Companies Act reads:

> 105. Notice of refusal to register transfer
>
> (1) If a company refuses to register a transfer of any share debenture or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.
>
> (2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.
>
> Penalty : One thousand ringgit. Default penalty.

On 12 April 1995, the first to the tenth defendants filed an application to set aside the *ex parte* mandatory order of 10 April 1995. That application came up for hearing before the Judge on 13 April 1995 but he adjourned it to 27 April 1995 which was after the two day period he had allowed for compliance of his *ex parte* order. The defendants immediately applied for a stay of the *ex parte* mandatory order pending disposal of their application to discharge it. The Judge refused to grant a stay of his *ex parte* order. On 14 April 1995, the transfer of the shares was registered in the share register of the first defendant company and new share certificates were issued to the plaintiffs under compulsive compliance of the *ex parte* order.

On 18 April 1995, the first to the tenth defendants filed notice of appeal against the *ex parte* mandatory order of 10 April 1995 to the Court of Appeal. On the same day, they also filed the present motion for a stay of the *ex parte* order pending appeal.

An interlocutory injunction is only granted to preserve the *status quo* until the rights of the parties have been determined in the action. The injunction will almost always be negative in form, to restrain the defendant from doing some act: see *Atkin's Court Forms*, 2nd ed., Vol. 22 (1991 issue), at p. 60 para 5.

However, an application can, in a proper case, be made *ex parte* but there must be a true urgency; see O. 29, r. 1(2) which says that "Where the applicant is the plaintiff and the case is one of urgency such application may be made *ex parte* by summons supported by an affidavit." In the present case, there was no urgency shown at all, and therefore the application cannot be made *ex parte*.

An interim injunction obtained on an *ex parte* application shall automatically lapse at the end of two weeks from the date on which it is granted: see O. 29 r. 1(2B).

Rule 1(2B) makes it necessary for the party who has applied for and obtained an *ex parte* injunction to apply *inter partes* for an interim injunction to preserve the existing position until the trial or until further order in the meantime. If he fails to do that, then his *ex parte* injunction will be discharged automatically at the end of two weeks. The rule also provides for the *ex parte* injunction to be sooner revoked or set aside.

An injunction obtained *ex parte* may, if a sufficient case of urgency can be made out, itself be discharged *ex parte*; see *London City Agency (JDC) v. Lee* [1970] Ch 597. If the plaintiff is present at the hearing, it is an example of an opposed *ex parte* motion: see *Atkin's Court Forms*, 2nd. ed., vol. 22 (1991 issue) at p. 72 para. 15.

The *ex parte* order in the instant case which compels compliance of it within two working days and the subsequent conduct of the Judge in adjourning the application of the defendants to set aside the *ex parte* order to a date after the period allowed for compliance of the order (without granting a stay of that *ex parte* order) has effectively deprived the defendants from exercising their right to apply to set aside an *ex parte* injunction. This misuse of the Court's procedure, in our view, is manifestly unfair to a party to litigation before it. The Court, therefore, has a duty to exercise its inherent power to prevent misuse of its procedure.

Since the order which was obtained through abuse of the process of the High Court had been complied with, it is no longer possible for this Court to stay the *ex parte* order. Not only are the shares now registered in the plaintiffs' names, they can now also enjoy the benefits of registration; the process of becoming a member and shareholder of a company is incomplete until entry on the register. But, that does not mean this Court is powerless to prevent an injustice. The shares, although they are now registered in the name of the plaintiffs' can be preserved pending the outcome of the appellants' appeal to the Court of Appeal. So we granted an interim order to prevent prejudice to the claims of the parties pending the hearing of the appeal in these terms:

> Pending the disposal of the appeal, the respondents be and are hereby restrained from enjoying or exercising any rights, including disposing of the shares whether directly or indirectly, attached to the shares described in the *ex parte* order dated 10 April 1995.

Thus we have exercised our inherent power to prevent further injustice from being perpetrated.

Although mandatory injunctions can be granted on interlocutory application, in the absence of evidence of an emergency or urgency, it will not be granted *ex parte*: see O. 29, r. 1(2). For example, such an injunction may be granted *ex parte* as in the case of an application for a Mareva injunction or for an Anton Piller order.

In *Hull & Humber v. TGWU* [1972] 1 Lloyds' Rep. 197, it was held, by Brightman J, that, even though the Union's instructions might be unlawful, the granting of an injunction *ex parte* to order the Union to withdraw its instructions was an extraordinary step; and in the circumstances, the plaintiffs should have applied *inter partes* in order to give the defendants proper opportunity to be heard. The Judge said at p. 199:

> My understanding of the position is that the Union is, in effect, directing its members not to permit cargo to be handled or conveyed by non-dock workers between quayside and dock car parks and other parts of the dock estate save where the cargo is being taken directly off the dock or the vehicle is attended by a dock worker.
>
> The relief sought on this motion is that the defendants should withdraw all instructions given to dock workers, who are the employees of the first and second plaintiffs, to the effect

that any movement of cargo from the ship to the car park or ship to any other part of the dock estate, other than the storage areas where off-loading takes place, must be done by registered dock workers.

And he concluded thus:

My understanding of the jurisdiction is that the granting of an injunction *ex parte* is what may be described as an extraordinary step and it was said by Lord Langdale, M.R., over a century ago that the time at which the plaintiff has had notice of the existence of the subject matter of the complaint is looked at by this Court with the greatest care and jealously in order to ensure that no improper order is made against a party in his absence.

...in my judgment, it would, in the circumtances, be quite wrong for me to grant relief *ex parte* behind the backs of the defendants. ...when the time came for plaintiffs to take more positive action and seek assistance from this Court, my view is that they should have applied *inter partes* in order to give the defendants a proper opportunity to be heard. The instructions given by the Union may well be unlawful. I express no view whatsoever at this stage about that.

I decline to grant any injunction on this motion because, having regard to the narrative, I think it would be incorrect for me to give any relief of that sort behind the backs of the defendants.

Order 29, r. 1(2) provides for an *ex parte* injunction to be applied for only in a case of urgency. In the instant case, there is no urgency shown. As such, it was quite wrong to grant relief *ex parte* behind the backs of the defendants. They should have applied *inter partes* in order to give the defendants a proper opportunity to be heard.

There is also another aspect of this case which warrants our comment. It is this. The respondents' general endorsed writ avers to a cause of action which is commercial in nature and that being the case, the proceedings should have commenced in the Commercial Division of the High Court at Kuala Lumpur. The heading, however, states otherwise as it carries a registration number, R3-25-3-1995 issued by the Appellate and Special Powers Division. We are very much aware that a civil suit registered in one of the three Civil Divisions of the High Court at Kuala Lumpur can, for good reason, be transferred to another Division of the High Court, but when that happens the registration numbers issued by the two Divisions concerned would appear on the heading, with one substituting for the other. In this instance, there was no likelihood of that happening as the only registration number, R3-25-3-1995 is unmistakably an Appellate and Special Powers Division number, thereby indicating that the respondents had filed their general indorsed writ in that Division and not in the Commercial Division as should have been the case.

The fact that the proceedings were filed in the wrong Division does not render the proceedings to be in any way invalid but may, coupled with other considerations in the present case, give the impression to right-thinking people that litigants can choose the Judge before whom they wish to appear for their case to be adjudicated upon. This, we consider, may lead to very unhealthy negative thinking and since justice must not only be done but must also be seen to be done, it is incumbent on the trial Judge, upon perusal of the pleadings, to have taken the initiative of transferring the proceedings to the right Division so as to dispel any notion that he is partial to any party. This is yet another added reason that strengthened our conviction that it is right and proper that we exercise our inherent power to prevent an injustice being done by the issue of an interim injunction restraining the respondents from enjoying the fruits of the registration of the infamous shares into their names. These observations are made so that people will not say, “Something is rotten in the state of Denmark.” Shakespeare, Hamlet, 1.